

APPEAL NO. 023182
FILED JANUARY 28, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 4, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) reached maximum medical improvement (MMI) on February 17, 1997, and that his impairment rating (IR) is 10%. The claimant appealed the hearing officer's MMI and IR determinations on sufficiency of the evidence grounds. The claimant contends that he was not at MMI on February 17, 1997, because he had subsequent back surgery on June 4, 2002. The claimant requests that the Appeals Panel reverse the hearing officer's determinations and render a decision that he reached statutory MMI on August 8, 1997 with at 13% IR as assessed by the treating doctor. The respondent (carrier) responded, urging affirmance, and contending that surgery was not under active consideration at statutory MMI and that the claimant waited too long to contest MMI and IR issues.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____, and that Dr. P was the Texas Workers' Compensation Commission (Commission)-selected designated doctor. Both Dr. P and Dr. F, the treating doctor, used the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association in assessing the claimant's IR. Dr. P determined that the claimant reached MMI on February 17, 1997, with a 10% IR based on a 5% impairment from Table 49, Section (II)(B) and a 5% impairment for lumbar loss of range of motion (ROM) combined to form a 10% whole body IR. Dr. F determined that the claimant reached MMI on February 17, 1997, with a 13% IR based on a 7% impairment from Table 49, Section (II)(C) and a 6% impairment for lumbar loss of ROM combined to form a 13% whole body IR.

The claimant argued that he was not at MMI because he had a subsequent back surgery (discectomy and fusion at L5-S1) on June 4, 2002, and that back surgery was under active consideration in 1996, before statutory MMI. The hearing officer notes in the Statement of Evidence paragraph that the claimant's alleged date of statutory MMI is August 8, 1997. A letter dated January 17, 1997, from Dr. F states that the claimant "has not been considered to be a surgical candidate." The medical evidence in totality reflects that the claimant was initially considered for surgery in 2001, after statutory MMI, and that the claimant postponed back surgery due to family issues.

Section 408.122(c) and 408.125(e) provide, in part, that the report of the designated doctor shall have presumptive weight and that the Commission shall base its determinations of whether the employee has reached MMI and the employee's IR on

such report unless it is contrary to the great weight of the other medical evidence. The hearing officer determined that the great weight of the other medical evidence is not contrary to the designated doctor's opinion. The evidence sufficiently supports the hearing officer's determination that the claimant reached MMI on February 17, 1997, with a 10% IR, as certified by Dr. P. We are satisfied that the challenged factual determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The true corporate name of the insurance carrier is **THE HOME INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge